

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the date of the last signature below (the "Effective Date"), by, between, and among, (i) [REDACTED] and [REDACTED] (together, the [REDACTED] or the "Couple") and (ii) Defendants United States of America; U.S. Department of Homeland Security ("DHS"); Kevin K. McAleenan, Acting Secretary of the U.S. Department of Homeland Security, in his official capacity;* U.S. Citizenship and Immigration Services ("USCIS"); and L. Francis Cissna, Director of U.S. Citizenship and Immigration Services, in his official capacity (collectively, the "United States" or "Defendants"). Collectively, the [REDACTED] and the Defendants are referred to herein as the "Parties," and each of the Parties is referred to herein as a "Party."

WHEREAS, the Couple are members of the conservative Old Order Amish, who state that they generally interpret literally the Bible, including the Second Commandment's prohibition on the creation of graven images, and that, therefore, their religious beliefs do not allow themselves to be photographed.

WHEREAS, on September 5, 2018, the Couple filed a Complaint in the United States District Court for the Southern District of Indiana, alleging violations of the federal Religious Freedom Restoration Act ("RFRA"), the First Amendment of the United States Constitution, the Due Process Clause of the Fifth Amendment, and the federal Administrative Procedure Act ("APA"). *See* Compl., *Doe v. United States*, No. 4:18-cv-162 (S.D. Ind. Sept. 5, 2018) (the "District Court Action").

WHEREAS, Defendants deny all liability with respect to the District Court Action, deny that they have engaged in any wrongdoing, deny the allegations in the Complaint, deny that they committed any violation of law, deny that they acted improperly in any way, and deny liability of any kind to the Couple.

WHEREAS the Parties agree to settlement of the District Court Action in order to avoid the substantial expense, inconvenience, and distraction of further litigation.

NOW, THEREFORE, for the consideration set forth herein, which each of the Parties acknowledges is sufficient, and for each of the covenants, understandings, obligations, and

* Pursuant to Federal Rule of Civil Procedure 25(d), Mr. McAleenan was automatically substituted for Kirstjen M. Nielsen, the former Secretary of the U.S. Department of Homeland Security, who was originally named as a defendant in the District Court Action (as that term is defined below).

provisions in this Agreement, each of the Parties knowingly, after considering the risks and benefits and consulting with counsel, agrees as follows:

I. Purpose of the Agreement

1. The purpose of this Agreement is to resolve all claims referenced in the preamble, to enable [REDACTED] to have her status adjusted to that of a lawful permanent resident, and to memorialize the process whereby [REDACTED] will be admitted into the United States at a port of entry after proving her identity and status as a lawful permanent resident.

II. Terms of the Agreement

2. [REDACTED] agrees to provide fingerprint or other non-photographic biometric data to Defendants. [REDACTED] agrees that the fingerprints captured will be stored by and made available within DHS for the purpose of verifying [REDACTED] identity, immigration status, and admissibility to the United States. Defendants reserve the right after reasonable notice to recall [REDACTED] to capture additional, non-photographic biometric data, including the recapture of her fingerprints as necessary to conform to changes in technology utilized by Defendants. To the extent that, prior to the Effective Date of this Agreement, [REDACTED] has been fingerprinted and those fingerprints have been stored by the United States, Defendants agree that those fingerprints may be used to satisfy this paragraph for Defendants' purposes, and [REDACTED] agrees that such fingerprints may be stored by and made available within DHS for Defendants' purposes.
3. [REDACTED] also agrees to provide her fingerprints or other non-photographic biometric data to Defendants upon request where Defendants determine reasonably in their sole discretion that capture of such fingerprints or other non-photographic biometric data is necessary to determine [REDACTED] identity, immigration status, or admissibility to the United States. [REDACTED] further agrees that she will cooperate fully with any reasonable request made by DHS for [REDACTED] to proceed with a DHS official to a DHS facility for a reasonable period necessary for DHS to confirm her identity, immigration status, and admissibility.
4. Defendants agree that any non-photographic biometric data submitted by [REDACTED] pursuant to this Agreement will be used only for purposes of confirming [REDACTED]

identity, immigration status, and admissibility, as well as any purpose in the ordinary course of Defendants' business.

5. [REDACTED] agrees to provide Defendant USCIS with a new, up-to-date Form I-693, Report of Medical Examination and Vaccination Record ("Form I-693") as soon as possible, but, in any event, within sixty (60) days of the Effective Date of this Agreement, for the purpose of determining admissibility under 8 U.S.C. § 1182(a)(1). Nothing in this Agreement shall affect [REDACTED] right to receive a waiver from the United States, or the United States' ability to provide [REDACTED] a waiver, pursuant to 8 U.S.C. § 1182(g) or otherwise. Should [REDACTED] require additional time to provide Defendant USCIS with the Form I-693 and/or any related documentation, she will notify Defendants, who will provide her any additional time reasonably requested. Defendants shall review and process [REDACTED] Form I-693 within ten (10) days of receipt, and shall determine during that same time whether [REDACTED] is inadmissible under 8 U.S.C. § 1182(a)(1). To facilitate that expedited processing, Defendants agree that, on or before the Effective Date of this Agreement, they will provide to [REDACTED] the name and address of a designated individual at Defendant DHS, Defendant USCIS, or the U.S. Department of Justice to whom she should send the completed Form I-693 and any other related documentation, such that it can be submitted and sent to a specific person and not a general address. To the extent any conflict exists, this Agreement and the instructions provided to [REDACTED] pursuant to this paragraph shall take precedence over the "Request for Evidence" dated May 13, 2019 or any other similar documentation sent to [REDACTED] by the United States.
6. Defendant USCIS agrees to approve [REDACTED] Form I-130, Petition for Alien Relative, on behalf of [REDACTED] and [REDACTED] Form I-485, Application to Register Permanent Residence or Adjust Status ("Form I-485"), no later than fifteen (15) days after determining that [REDACTED] is not inadmissible under 8 U.S.C. § 1182(a)(1).
7. Defendant USCIS agrees to provide [REDACTED] with a Form I-797, Notice of Action ("Form I-797"), advising [REDACTED] that Defendant USCIS approved her Form I-485 and that [REDACTED] status has been adjusted to that of a lawful permanent resident, no later than fifteen (15) days after approval of her Form I-485. The Form I-797 will constitute

confirmation and verification that, subject to the conditions of this agreement, Defendant USCIS has granted [REDACTED] lawful permanent resident status.

8. The Form I-797 will contain the following language: "This notice may not be used as a substitute for the I-551 Permanent Resident Card when completing the Employment Eligibility Verification Form I-9 and is not an acceptable Form I-9 list A, B, or C document establishing identity and/or employment eligibility:"
9. [REDACTED] agrees that Form I-797 is not an identity document and may not be used for any purpose in lieu of a Form I-551, Permanent Resident Card ("Permanent Resident Card" or "Form I-551"). [REDACTED] agrees that Form I-797 may be used only as proof to DHS of her status as a lawful permanent resident and that it may not be used for any other purpose or with respect to any other governmental or non-governmental entity.
10. Defendants agree that if [REDACTED] complies with the provisions of this Agreement and carries a copy of Form I-797 (or any substitute document provided for in paragraph 12 below) and a copy of this Agreement during a border crossing, she will be in compliance with Immigration and Nationality Act ("INA") § 264(e), 8 U.S.C. § 1304(e).
11. Defendants agree that, in the event that [REDACTED] is required to demonstrate proof of lawful permanent residency to any person or entity other than DHS, Defendants will meet and confer with [REDACTED] in good faith and, to the extent reasonably possible, provide acceptable proof of such status.
12. Defendants reserve the right, in Defendants' discretion, to substitute other documentary proof of [REDACTED] status under the immigration laws of the United States for Form I-797. Defendants agree that, at a minimum, any substitute documentation chosen by Defendants can be used by [REDACTED] to the same extent as Form I-797 can be used under this Agreement.
13. [REDACTED] agrees not to use or attempt to use Form I-797 as a means of seeking work authorization and, if [REDACTED] completes the Employment Eligibility Verification, Form I-9, Form I-797 may not be used as a substitute for the Permanent Resident Card or as a Form I-9 list A, B, or C document establishing identity and/or employment eligibility.
14. Defendants agree that, while [REDACTED] currently has no need to verify her employment eligibility, they will meet and confer in good faith with her should [REDACTED] wish to seek verification of employment eligibility.

15. [REDACTED] agrees to enter or depart the United States only through (i) the Blue Water Bridge in Port Huron, Michigan; (ii) the Ambassador Bridge in Detroit, Michigan; or (iii) the Lewiston-Queenston Bridge in Lewiston, New York. Defendants agree that they will meet and confer in good faith with [REDACTED] should she request the ability to enter or depart the United States through another port of entry. [REDACTED] agrees that the procedures outlined in this Agreement relating to [REDACTED] applications for admission as a returning lawful permanent resident apply only to these three ports of entry. [REDACTED] further agrees that the terms of this Agreement only apply to travel by land and do not confer any rights, privileges, or other benefits with regard to air or sea travel.
16. [REDACTED] agrees not to use Form I-797 to travel or attempt to travel via air or sea outside the United States. In the event that [REDACTED] uses some other document to travel abroad by air or sea, once abroad she will not use the Form I-797 to establish lawful permanent resident status while outside the United States.
17. Upon each application for admission as a returning lawful permanent resident to the United States at one of the ports of entry identified above, [REDACTED] agrees to provide a copy of Form I-797 or any substitute document provided for in paragraph 12 above and the non-photographic biometric identifiers specified in paragraphs 2 and/or 3 above for the purpose of establishing her identity and status as a lawful permanent resident.
18. Upon each application for admission to the United States without the identification otherwise required by law to establish identity, citizenship, and status under the immigration laws of the United States, [REDACTED] agrees to submit a complete, valid Form I-193, Application for Waiver of Passport/Visa ("Form I-193"), or any successor or replacement form, and Defendants agree to waive the requirement that [REDACTED] present a Permanent Resident Card upon submission of a complete, valid Form I-193, subject to confirmation by U.S. Customs and Border Protection ("CBP") of [REDACTED] admissibility to the United States. Defendants agree to waive the fee associated with each Form I-193 submitted by [REDACTED] each time she applies for admission.
19. On or before the Effective Date, Defendants agree to provide appropriate guidance regarding the terms of this Agreement to the Blue Water Bridge, Ambassador Bridge, and Lewiston-Queenston Bridge ports of entry, as well as guidance to [REDACTED] regarding the language [REDACTED] should use in completing Form I-193, so that the purpose of this

Agreement is satisfied. Should an issue relating to [REDACTED] admission arise at the time she applies for admission to the United States at the Blue Water Bridge, Ambassador Bridge, or Lewiston-Queenston Bridge ports of entry, [REDACTED] may request that the inspecting officer seek supervisory guidance. Consistent with any CBP policy or guidance provided in accordance with this paragraph, the inspecting officer shall seek the appropriate guidance to resolve the issue.

20. [REDACTED] agrees that she will be inspected and examined upon each application for admission to the United States in accordance with the INA and any other applicable federal law, and that nothing in this Agreement otherwise guarantees admission to the United States.
21. Defendants agree that nothing in this Agreement shall prevent [REDACTED] from choosing to submit to a photograph and receiving photo identification, such as a Form I-551, designated by CBP in accordance with 8 C.F.R. Part 264 as sufficient proof of identity for purposes of verifying that Defendant USCIS has adjusted [REDACTED] status to lawful permanent resident.
22. [REDACTED] agrees that, if the United States Congress, DHS, or any other federal government actor adopts a change in the law or regulation that substitutes alternative, non-photographic imaging for the current photographic identification requirements attendant with verification of lawful permanent residency status, [REDACTED] will abide by this change in law or regulation by submitting to alternative, non-photographic imaging substitutes outlined in the new law or regulation and shall, within a reasonable time, obtain such alternative, non-photographic documentation of her status as a lawful permanent resident.
23. Consistent with paragraph 22 above, the Parties agree that, if any changes in law, operations, or technology materially affect this Agreement, they will meet and confer in good faith to consider and negotiate changes to this Agreement that accommodate the affected Party(ies) to an extent that accords with the purpose of this Agreement.
24. The Parties agree that, subsequent to the adjustment of status of [REDACTED] to that of a lawful permanent resident. Defendants will upon request meet with [REDACTED] and confer in good faith to discuss whether additional, fewer, or different procedures need to be considered in view of the passage of time or the passage, repeal, or modification of any

laws that may have affected terms of this Agreement, or for any other reason. Any modifications to this Agreement must be made in accordance with the provisions set forth in this Agreement.

25. This Agreement applies to and is binding upon the Couple and Defendants, including Defendants' officers, representatives, agents, employees, successors, and assigns.

III. Finality, Successors, and Release of Claims

26. This Agreement, as of the date that [REDACTED] Form I-485 is approved in accordance with paragraph 6 above, resolves any and all known claims between the Parties that derive from [REDACTED] immigration status and [REDACTED] past or now pending applications for lawful permanent resident status, or raised by the Couple in the District Court Action against Defendants and their predecessors, successors, or assignees, together with past, present, or future officers, employees, representatives, and agents, in both their official and personal capacities.
27. The Parties agree that on the Effective Date they shall file a joint motion to stay proceedings in the District Court, advising the Court that they have agreed to and executed a settlement agreement and that they will jointly move to dismiss the District Court Action with prejudice once certain necessary steps have occurred. The Parties further agree that within seven (7) days of the date that [REDACTED] Form I-485 is approved in accordance with paragraph 6 above, the Parties will jointly move to dismiss with prejudice the District Court Action.
28. The parties agree that they have no right to appeal the dismissal of the District Court Action and that each party will bear its own costs and fees, including attorneys' fees. The Couple agrees that they shall not seek, solicit, or request attorneys' fees and/or litigation costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other provision.

IV. Execution of Agreement and Multiple Counterparts

29. This Agreement may be executed in a number of identical counterpart copies, each of which shall be an original but all of which, when taken together, shall constitute one and the same instrument. Electronic or facsimile executed copies of this Agreement shall be acceptable and binding. Counsel may sign for and on behalf of any Party.

V. Modification and Termination of Agreement

30. This Agreement constitutes the entire agreement among the Parties as to all claims raised by the Couple in the District Court Action.
31. This is an integrated agreement and may not be altered or modified except by a writing signed by all Parties in interest or their authorized representatives at the time of the authorization and modification.
32. This Agreement shall terminate upon any of the following events: (a) the death of [REDACTED]; (b) by mutual written agreement of the Parties; or (c) [REDACTED] ceases to be a lawful permanent resident by a final order of removal or as otherwise provided by the INA. Should Defendant USCIS determine, after receipt and review of [REDACTED] Form I-693 as described in paragraph 5, that [REDACTED] is inadmissible, and should Defendant USCIS also refuse to provide [REDACTED] a waiver pursuant to 8 U.S.C. § 1182(g) or otherwise, then this Agreement shall be null and void, as if the Parties had never entered into it.
33. In the event of any other material change in circumstances, if the Parties are unable to agree upon modifications to this Agreement to account for such changed circumstances, any Party may move the United States District Court for the Southern District of Indiana for enforcement, modification, or termination of this Agreement pursuant to Section VI below. Termination of this Agreement shall only be granted upon a showing of good cause.

VI. Enforcement of Agreement

34. The Parties agree that they will seek to resolve any question regarding interpretation or an alleged breach of this Agreement informally. However, if a question cannot be resolved informally, counsel for any Party(ies) shall notify counsel for the opposing Party(ies) in writing and request that counsel meet and confer. The Parties shall have fourteen (14) days from the date of said notice to attempt to arrive at an amicable resolution of the dispute.
35. Should the Parties fail to reach an agreement after the meet-and-confer process described in Paragraph 34 above, any Party(ies) may move to enforce this Agreement. The Parties

agree that such action shall only be brought before the United States District Court for the Southern District of Indiana.

36. The dispute resolution procedures and the meet-and-confer process set forth in this Agreement shall be conducted confidentially. No public disclosure relating to the question shall be made during the meet-and-confer process.
37. Any and all documents and information disclosed by any Party(ies) during any meet-and-confer process provided for in this Agreement shall not be admissible in any judicial proceeding, unless the document or information was otherwise discoverable and admissible independent of the meet-and-confer process.

VII. No Admission of Liability


38. This Agreement and any proceedings taken pursuant to it shall not be construed to waive, reduce, or otherwise diminish the authority of the Defendants to enforce the laws of the United States.
39. Subject to the provisions herein, this Agreement shall not be offered or received against Defendants as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Defendants of the truth of any fact alleged by the Couple or the validity of any claim that had been or could have been asserted in the District Court Action or in any litigation; or the deficiency of any defense that has been or could have been asserted in the District Court Action, or of any liability, negligence, fault, or wrongdoing of the Defendants; or any admission by the Defendants of any violations of, or failure to comply with, the Constitution, laws, or regulations.
40. Subject to the provisions herein, this Agreement shall not be offered or received against the Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement.

VII. Miscellaneous Provisions

41. The Parties agree that should [REDACTED] believe that any non-photographic biometric data requested by Defendants pursuant to this Agreement imposes a substantial burden on her

religious beliefs that they will meet and confer in good faith pursuant to Section VI above to discuss and agree upon a mutually agreeable, reasonable alternative(s).

42. This Agreement shall not be construed more strictly against any Party than any other merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized by the Parties that this Agreement is the result of negotiations between the Parties and that all Parties have contributed substantially and materially to the preparation of this Agreement.
43. All counsel and any other person executing this Agreement and any, if any, related settlement documents warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken under the Agreement to effectuate its terms.
44. If any provision of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties.
45. All notices, requests, or other communications required hereunder to any Party shall be deemed to be sufficient if contained in a written instrument delivered in person or sent by overnight delivery, addressed to such Party's counsel as set forth below or at such other address as may hereafter be designated in writing by such Party:

(i) *if to either or both of the* :

Michael H. Sampson, Esquire
Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222

(ii) *if to any or all of the Defendants:*

Victor M. Mercado-Santana, Esquire
Trial Attorney
Civil Division
Office of Immigration Litigation, District Court Section
United States Department of Justice

P.O. Box 868, Ben Franklin Station
Washington, DC 20044

For overnight deliveries:
450 5th Street NW, Rm. LL111B
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Respectfully submitted,

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May 23, 2019

and

/s/ 

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May ²⁴~~21~~, 2019